



**U.S. Immigration
and Customs
Enforcement**

AUG 16 2017

The Honorable Ron Wyden
United States Senate
Washington, DC 20510

Dear Senator Wyden:

Thank you for your May 23, 2017 letter.

U.S. Immigration and Customs Enforcement (ICE) uses cell-site simulators, also referred to as stingray devices, in support of criminal investigations requiring judicial process, and not for administrative violations under the Immigration and Nationality Act. The use of cell-site simulators is permitted only as authorized by law and policy. Under current policy, ICE agents and officers must obtain a search warrant supported by probable cause and issued pursuant to Rule 41 of the Federal Rules of Criminal Procedure (or applicable state equivalent). ICE currently operates cell-site simulators under Department of Homeland Security (DHS) Policy Directive 047-02, "Department Policy Regarding the Use of Cell-Site Simulator Technology," dated October 19, 2015, which is in concert with the Department of Justice's policy guidance regarding the use of cell-site simulator technology.

ICE Homeland Security Investigations (HSI) conducts cell-site simulator operations during criminal investigations. The technology is typically used to either locate a subject using their mobile device, or to determine what mobile device (i.e., smartphone) a subject is carrying. In the context of criminal investigations, this technology helps our agents find suspects that are otherwise difficult to locate in order to arrest them or initiate surveillance. When used to identify a mobile device carried by a suspect, it provides our investigators with information that can then be used to subpoena the phone records for that device, or to initiate a wiretap under Title III authorities to monitor the suspect's communications. ICE HSI will, when practicable based on the totality of circumstances, attempt to locate the target of an investigation using traditional investigative techniques prior to deploying a cell-site simulator. ICE HSI will only deploy the cell-site simulator in the general geographic area of the target mobile handset for the minimum amount of time needed to determine the location of the target of the criminal investigation.

During use of cell-site simulators, interference with non-targeted mobile devices is virtually non-existent. The mobile identifier of non-targeted mobile handsets is verified by the cell-site simulators automatically as a non-target and sent back to the host mobile network. This process is conducted in an amount of time that is not noticeable to the user. If a call is placed or received during the exact instant the verification is taking place, interference may result. The equipment software has provisions to allow a captured device (i.e., one currently engaged by the

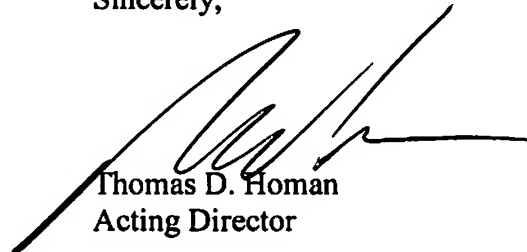
cell-site simulator) to return to the host network if the captured device initiates a call. In all circumstances, devices are always able to dial 911 without any disruption of service.

ICE HSI remains committed to ensuring law enforcement practices concerning the collection or retention of data are lawful and respect the important privacy interests of individuals. As part of this commitment, ICE HSI operates in accordance with rules, policies, and laws that control the collection, retention, dissemination, and disposition of records that contain personally identifiable information. As with data collected in the course of any investigation, these authorities apply to information collected through use of a cell-site simulator.

To address your specific concern related to ICE Enforcement and Removal Operations (ERO) utilizing cell-site simulators, we note that ICE ERO does not use cell-site simulators for the purpose of civil immigration law enforcement. While ICE ERO's primary mission is to enforce the Nation's civil immigration laws, individual ICE ERO officers may participate in Joint Task Forces with federal, state, and local law enforcement partners, in furtherance of our shared public safety mission. Such a Joint Task Force may employ various technologies, including cell-site simulator technology, to pursue individuals suspected of engaging in criminal activity. However, such use must be conducted in a manner that protects rights afforded by the United States Constitution, and in compliance with applicable statutory authorities, DHS policy, and ICE policy.

Thank you again for your letter and interest in this important matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Tom Homan', is written over the typed name and title.

Thomas D. Homan
Acting Director